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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THE EINSTEIN ACADEMY CHARTER	:	
SCHOOL,	:	
Plaintiff	:	
	:	
Vs.	:	Civil Action No. 02-2880
	:	
TUTORBOTS, INC., et al.,	:	(Judge Berle M. Schiller)
Defendants	:	
	:	
And	:	
	:	
FAIRFIELD AREA SCHOOL	:	
DISTRICT, GETTYSBURG AREA	:	
SCHOOL DISTRICT, UPPER ADAMS	:	
SCHOOL DISTRICT, LITTLESTOWN	:	
AREA SCHOOL DISTRICT,	:	
BERMUDIAN SPRINGS SCHOOL	:	
DISTRICT, CENTENNIAL SCHOOL	:	
DISTRICT, BUTLER AREA SCHOOL	:	
DISTRICT, KARNS CITY AREA	:	
SCHOOL DISTRICT, MARS AREA	:	
SCHOOL DISTRICT, MONITEAU	:	
AREA SCHOOL DISTRICT, SENECA	:	
VALLEY SCHOOL DISTRICT,	:	
SLIPPERY ROCK AREA SCHOOL	:	
DISTRICT, SOUTH BUTLER COUNTY	:	
SCHOOL DISTRICT, PENN CAMBRIA	:	
SCHOOL DISTRICT, BLACKLICK	:	
VALLEY SCHOOL DISTRICT,	:	
GREATER JOHNSTOWN SCHOOL	:	
DISTRICT, CENTRAL CAMBRIA	:	
SCHOOL DISTRICT,	:	
DOWNINGTOWN AREA SCHOOL	:	

DISTRICT, PHOENIXVILLE AREA
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SCHOOL DISTRICT, OCTORARA
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COATESVILLE AREA SCHOOL
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SHIPPENSBURG AREA SCHOOL

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SOUTHEASTERN SCHOOL
DISTRICT, WEST SHORE SCHOOL
DISTRICT, SPRING GROVE SCHOOL
DISTRICT, WEST YORK AREA
SCHOOL DISTRICT,
and RED LION SCHOOL DISTRICT,
Intervenors

**Motion of One Hundred and Fourteen School Districts to Ask the Court to
Reconsider Its Order Denying Their Motion to Intervene**

AND NOW, come the one hundred and fourteen school districts named in the caption, (hereafter "School Districts"), by and through their attorneys, the Levin Legal Group, P.C., who file this Motion to Intervene pursuant to F.R.C.P. 24, and who, in support thereof, aver as follows:

1. The plaintiff in this action, The Einstein Academy Charter School (“Einstein”), filed this action on or about May 14, 2002.
2. The Complaint contained eleven counts.
3. The first count was for both preliminary and permanent injunctive relief.
4. The remaining counts sought money damages for alleged violation of the Lanham Act (Counts II and III), money damages for alleged violation of the Pennsylvania Unfair Trade Practices Act (Count IV), money damages for misappropriation of trade secrets (Count V), money damages for alleged breach of contract (Count VI), money damages for alleged conversion (Count VII), money damages for unjust enrichment (Count VIII), an accounting for money defendant Tutorbots, Inc. received (Count IX), and the imposition of express and constructive trusts on “the millions of dollars” (¶ 75) Tutorbots received.
5. The Intervenor School Districts who filed this motion have been seeking, in litigation throughout the Commonwealth of Pennsylvania, to get those “millions of dollars” to which the Complaint refers returned to them, as that money ultimately came from the funds the Pennsylvania Department of Education deducted from the subsidies owed to the Intervenor School Districts, or directly from the School Districts themselves; and the Intervenor School Districts never should

have paid any of that money, as described more fully in the School Districts' Motion to Intervene and accompanying papers.

6. On May 17, 2002, Plaintiff and defendant entered into a Consent Order which disposed of the need for a preliminary injunction.
7. That Consent Order did not mention the other ten counts of the complaint, including the dispute over "millions of dollars."
8. That Consent Order did not mention dismissing the case.
9. Indeed, the dispute over the "millions of dollars" remains a matter of significant controversy between all the parties, including Plaintiff, Defendant and the Intervenor School Districts.
10. The Court, however, denied the intervenor's Motion to Intervene "as moot," and communications from Court personnel suggest the reason this motion was seen as moot is the Court views the case as closed.
11. On or about June 12, 2002, Einstein moved this Court to reconsider its view that the case is fully resolved, because of the remaining ten counts seeking, *inter alia*, money damages that could total millions of dollars.
12. As long as this remains an active controversy, the Intervenor School Districts need to be involved for all the reasons stated in their original motion.

WHEREFORE, the Intervenor School Districts respectfully request that the Court reconsider its ruling to deny their Motion to Intervene as moot, and to instead entertain their Motion to Intervene on its merits.

Respectfully submitted,

LEVIN LEGAL GROUP, P.C.

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TUTORBOTS, INC., et al.,	:	(Judge Berle M. Schiller)
Defendants	:	
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SCHOOL DISTRICT, :
and RED LION SCHOOL DISTRICT, :
Intervenors

ORDER

AND NOW, this day of , 2002, upon the Motion of One Hundred and
Fourteen School Districts that this Court reconsider its earlier ruling denying their
Motion to Intervene as moot, the Court will GRANT the Motion to Reconsider
and instead entertain the original Motion to Intervene on its merits. The Plaintiff

and Defendant will have ten days from the date of this Order to respond to the original Motion to Intervene.

Berle M. Schiller, J.

Michael I. Levin, Esquire
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 Intervenor

**MEMORANDUM OF LAW IN SUPPORT OF THE MOTION OF
 ONE HUNDRED FOURTEEN SCHOOL DISTRICTS TO HAVE
 THE COURT RECONSIDER ITS DENIAL OF THEIR MOTION TO
INTERVENE AS MOOT.**

The Einstein Academy Charter School (“Einstein”) filed this action against Tutorbots, Inc. (“Tutorbots”) seeking a vast array of relief from Tutorbots, including damages for breaches of contract, the Pennsylvania Unfair Trade Practices Act,

the Lanham Act, and for conversion. In addition, Einstein sought to impose a trust on the “millions of dollars” (Complaint at ¶ 75) Tutorbots collected, ultimately, from money that otherwise would have come to the Intervenor School Districts, and also sought to obtain an accounting of those funds. Einstein also sought injunctive relief, both preliminary and permanent.

Both parties in the case at bar are fighting about money they took from the School Districts and which the School Districts already have been seeking to get back. All the money Einstein Academy Charter School (“Einstein”) claims Tutorbots, Inc. (“Tutorbots”) owes to Einstein is in fact money the Commonwealth’s Department of Education withheld from the School Districts, amounting to millions of dollars, money to which the School Districts themselves are entitled. Where the Complaint in paragraph 2 speaks of “profits that defendant Tutorbots, Inc. realized from its contract with Einstein,” the same profits for which the complaint seeks an accounting of the imposition of a trust, the Complaint is speaking of profits made because the Department of Education gave money to “Einstein/Tutorbots” instead of to the School Districts. What’s worse, the money was taken from the School Districts and paid by the Pennsylvania Department of Education largely as a result of illegal conduct and fraudulent misrepresentations.

As the money Einstein sought from Tutorbots belongs to the Intervenor School Districts, and since the Intervenor School Districts definitely want that money returned to them, they filed their original Motion to Intervene. Unfortunately, that motion has been dismissed as moot although it is very much a living controversy.

The preliminary injunctive relief Einstein sought has been resolved through a Consent Order, filed May 17, 2002. That consent order, however, has done nothing

about the outstanding claims for “millions of dollars.” That Consent Order in fact did nothing to address ten of the original eleven counts in the complaint. Indeed, Einstein soon will be filing, if it has not done so yet, the appropriate motion with this Court to make it clear that this case is still not resolved. The action in this Court remains very much alive.

As long as the action in this Court remains a living controversy, then so does the claim of the Intervenor School Districts for the money at the heart of this action. As long as the action in this Court is not resolved, the Intervenor School Districts have a significant stake. Therefore, the Intervenor School districts respectfully request that the Court reconsider its decision to deny the School District’s Motion to Intervene as moot. Instead, the Court should consider their Motion to Intervene on the merits.

Respectfully submitted,

LEVIN LEGAL GROUP, P.C.

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CERTIFICATE OF SERVICE

I, John Randolph Prince, hereby certify that on this day of June, 2002, I caused the foregoing to be served upon the following by first-class mail at the addresses listed below:

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Francis X. Taney, Esquire
Buchanan Ingersoll, P.C.
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Chester, Pennsylvania 19013-3934
Counsel for Defendants

John Randolph Prince